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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DEBORAH A. PERRY and
LAURA J. PERRY,

Plaintiffs,

vs.

BENEFICIAL OF OREGON, INC.,
BRIAN D. COX, and
VERMILYEA LAW FIRM,

Defendants.

Civ. No. 08-6130-TC

FINDINGS AND RECOMMENDATION

Coffin, Magistrate Judge:

Defendants move to dismiss plaintiffs' claims for lack of jurisdiction and failure to state a claim upon which relief can be granted (#13, #17, #19). For the reasons that follow, defendants' motions should be granted.

On December 29, 2004, a trustee's sale was held following defendant Beneficial's nonjudicial foreclosure on its deed of trust, which encumbered real property at 273 Wakonda Beach SW in Waldport, OR. A trustee's deed was recorded on January 13, 2005, giving Beneficial title to the property. In a 2007 General Judgment, the Lincoln County Circuit Court reaffirmed that

1 Beneficial was the vested owner of the property and reformed the
2 deed to include additional "improved land." In February 2008,
3 the circuit court granted a directed verdict and entered judgment
4 in favor of Beneficial as against plaintiffs. That judgment
5 authorized the Clerk of the Court to issue a Notice of
6 Restitution directing the Lincoln County Sheriff to place
7 Beneficial in sole possession of the property at issue. Another
8 notice was later issued directing the sheriff to place Beneficial
9 in sole possession of the improved property.

10 The one-page complaint at issue was filed in April 2008, and
11 makes vague and conclusory allegations against Beneficial, Brian
12 D. Cox, and Vermilyea Law Firm for duress, slander, breach of
13 contract, illegal eviction, and harassment, which plaintiffs
14 contend caused them unspecified damages.

15 16 Standard

17 Defendants argue that this action should be dismissed
18 because this Court lacks subject matter jurisdiction (Fed. R.
19 Civ. P. 12(b)(1)), and because the complaint fails to state a
20 claim for relief (Fed. R. Civ. P. 12(b)(6)). The district
21 court has original jurisdiction where there is diversity of
22 citizenship and the matter in controversy exceeds \$75,000, or
23 where the action sets forth claims arising under the
24 Constitution, laws, or treaties of the United States. 28
25 U.S.C. §§1331, 1332. The complaint fails to set forth
26 sufficient facts to establish jurisdiction under either theory.

27 Furthermore, even if this Court had jurisdiction,
28 plaintiffs fail to state a claim for relief. "Material

2 Findings and Recommendation

1 allegations in a complaint must be taken as true and viewed in
2 the light most favorable to the plaintiff." Geraci v.
3 Homestreet Bank, 347 F.3d 749, 751 (9th Cir. 2003) (citing
4 Daviton v. Columbia/HCA Healthcare Org., 241 F.3d 1131, 1133 n.
5 1 (9th Cir. 2001). A court may dismiss a claim if it appears
6 beyond doubt that the plaintiff can prove no set of facts to
7 support the claim that would entitle the plaintiff to relief.
8 Keniston v. Roberts, 717 F.2d 1295, 1300 (9th Cir. 1983)
9 (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). A
10 plaintiff must plead factual allegations with specificity;
11 vague and conclusory allegations fail to state a claim for
12 relief. Colburn v. Upper Darby Township, 838 F.2d 663, 666
13 (3rd Cir. 1988). If the claim is not based on a proper legal
14 theory , it should be dismissed. Keniston, 717 F.2d at 1300.

15 Plaintiffs' complaint makes only vague and conclusory
16 allegations and fails to state a claim.

17 Moreover, defendants Beneficial and Cox argue that
18 plaintiffs' vague claim of ownership is barred by res judicata
19 and collateral estoppel. Those challenges may properly be
20 raised in a motion to dismiss for failure to state a claim
21 under Fed. R. Civ. P. 12(b)(6). Scott v. Kuhlmann, 746 F.2d
22 1377, 1378 (9th Cir. 1984). In addition, the Court may
23 consider matters outside the complaint which may be judicially
24 noticed. Specifically, Fed. R. Evid. 201 permits this Court to
25 take judicial notice of Oregon circuit court proceedings
26 because the legal implications of those orders present a pure
27 question of law. The circuit court entered several dispositive
28 orders as to the issue of ownership and possession of the

3 Findings and Recommendation

1 property. Accordingly, plaintiffs' vague claims of ownership
2 and possession, which arise out of the same set of facts in the
3 state court actions, have been fully adjudicated. Plaintiffs
4 fail to make a claim on that basis in this Court.

5
6 Conclusion

7 For the foregoing reasons, defendants' motions to
8 dismiss (#13, #17, #19) should be granted.

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10 Dated this 30th day of July, 2008.

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14 THOMAS M. COFFIN
15 United States Magistrate Judge
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